



January 28, 2005

SENATE BILL No. 340

DIGEST OF SB 340 (Updated January 26, 2005 1:07 pm - DI 106)

Citations Affected: IC 31-9; IC 31-17; IC 31-19; IC 31-34.

Synopsis: Child abuse and neglect; adoption proceedings. Requires the court to determine whether a person, licensed child placing agency, or county office of family and children placing a child for adoption has provided required documents to the prospective adoptive parents before granting the adoption. Provides that if a person representing the state files a motion to dismiss a child in need of services petition, the person must provide a statement that sets forth the reasons for requesting the dismissal. Provides that the court shall, not later than ten days after the motion to dismiss is filed, grant the motion or set a date for a hearing on the motion. Provides that if the court sets a date for a hearing, the court may appoint a guardian ad litem or a court appointed special advocate, or both, to represent the best interests of the child. Adds court appointed special advocates (CASA) to the list of individuals who may: (1) petition a court to order a custodian to obtain counseling for a child; (2) petition a juvenile court to modify a dispositional decree; and (3) receive a notice of an initial hearing concerning a children in need of services (CHINS) petition. Permits the county office of family and children to request that a juvenile court appoint a CASA for a child. Provides that a court may make certain CHINS reports available to a CASA.

Effective: July 1, 2005.

Lawson C, Lanane

January 11, 2005, read first time and referred to Committee on Judiciary.
January 27, 2005, amended, reported favorably — Do Pass.

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January 28, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 340

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 31-9-2-6 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2005]: Sec. 6. "Adoptive parent", for purposes
3 of **IC 31-19-11 and** IC 31-19-17 through IC 31-19-24, means an adult
4 who has become a parent of a child through adoption.
5 SECTION 2. IC 31-17-2-16 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. Upon:
7 (1) the court's own motion;
8 (2) the motion of a party;
9 (3) the motion of the child; ~~or~~
10 (4) the motion of the child's guardian ad litem; **or**
11 **(5) the motion of the court appointed special advocate;**
12 the court may order the custodian or the joint custodians to obtain
13 counseling for the child under such terms and conditions as the court
14 considers appropriate.
15 SECTION 3. IC 31-19-11-1 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Whenever the
17 court has heard the evidence and finds that:

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(1) the adoption requested is in the best interest of the child;

(2) the petitioner or petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education;

(3) the report of the investigation and recommendation under IC 31-19-8-5 has been filed;

(4) the attorney or agency arranging an adoption has filed with the court an affidavit prepared by the state department of health under IC 31-19-5-16 indicating whether a man is entitled to notice of the adoption because the man has registered with the putative father registry in accordance with IC 31-19-5;

(5) proper notice arising under subdivision (4), if notice is necessary, of the adoption has been given;

(6) the attorney or agency has filed with the court an affidavit prepared by the state department of health under:

(A) IC 31-19-6 indicating whether a record of a paternity determination; or

(B) IC 16-37-2-2(g) indicating whether a paternity affidavit executed under IC 16-37-2-2.1;

has been filed in relation to the child;

(7) proper consent, if consent is necessary, to the adoption has been given; ~~and~~

(8) the petitioner for adoption is not prohibited from adopting the child as the result of an inappropriate criminal history described in subsection (c); ~~and~~

(9) the person, licensed child placing agency, or county office of family and children that has placed the child for adoption has provided the documents and other information required under IC 31-19-17 to the prospective adoptive parents;

the court shall grant the petition for adoption and enter an adoption decree.

(b) A court may not grant an adoption unless the department's affidavit under IC 31-19-5-16 is filed with the court as provided under subsection (a)(4).

(c) A conviction of a felony or a misdemeanor related to the health and safety of a child by a petitioner for adoption is a permissible basis for the court to deny the petition for adoption. In addition, the court may not grant an adoption if a petitioner for adoption has been convicted of any of the felonies described as follows:

(1) Murder (IC 35-42-1-1).

(2) Causing suicide (IC 35-42-1-2).

(3) Assisting suicide (IC 35-42-1-2.5).

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- (4) Voluntary manslaughter (IC 35-42-1-3).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Battery as a felony (IC 35-42-2-1).
- (7) Aggravated battery (IC 35-42-2-1.5).
- (8) Kidnapping (IC 35-42-3-2).
- (9) Criminal confinement (IC 35-42-3-3).
- (10) A felony sex offense under IC 35-42-4.
- (11) Carjacking (IC 35-42-5-2).
- (12) Arson (IC 35-43-1-1).
- (13) Incest (IC 35-46-1-3).
- (14) Neglect of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2)).
- (15) Child selling (IC 35-46-1-4(d)).
- (16) A felony involving a weapon under IC 35-47 or IC 35-47.5.
- (17) A felony relating to controlled substances under IC 35-48-4.
- (18) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.
- (19) A felony that is substantially equivalent to a felony listed in subdivisions (1) through (18) for which the conviction was entered in another state.

However, the court is not prohibited from granting an adoption based upon a felony conviction under subdivision (6), (11), (12), (16), or (17), or its equivalent under subdivision (19), if the offense was not committed within the immediately preceding five (5) year period.

SECTION 4. IC 31-34-2.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. Whenever a child is taken into custody without a court order under this chapter, the attorney for the county office of family and children shall, without unnecessary delay, request the juvenile court to:

- (1) authorize the filing of a petition alleging that the child is a child in need of services;
- (2) hold an initial hearing under IC 31-34-10 not later than the next business day after the child is taken into custody; and
- (3) appoint a guardian ad litem **or a court appointed special advocate** for the child.

SECTION 5. IC 31-34-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. ~~Upon motion by the person representing the interests of the state, the juvenile court shall dismiss any petition the person has filed:~~ **(a) A person representing the interests of the state may file a motion to dismiss any petition that the person has filed under this chapter.**

(b) If a person files a motion to dismiss under subsection (a), the

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1 person must provide to the court a statement that sets forth the
2 reasons the person is requesting that the petition be dismissed.

3 (c) Not later than ten (10) days after the motion to dismiss is
4 filed under subsection (a), the court shall:

5 (1) summarily grant the motion to dismiss; or

6 (2) set a date for a hearing on the motion to dismiss.

7 (d) If the court sets a hearing on the motion to dismiss under
8 subsection (c)(2), the court may appoint:

9 (1) a guardian ad litem;

10 (2) a court appointed special advocate; or

11 (3) both a guardian ad litem and a court appointed special
12 advocate;

13 to represent and protect the best interests of the child.

14 SECTION 6. IC 31-34-10-2 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The juvenile
16 court shall hold an initial hearing on each petition.

17 (b) The juvenile court shall set a time for the initial hearing. A
18 summons shall be issued for the following:

19 (1) The child.

20 (2) The child's parent, guardian, custodian, ~~or~~ guardian ad litem,
21 or court appointed special advocate.

22 (3) Any other person necessary for the proceedings.

23 (c) A copy of the petition must accompany each summons. The
24 clerk shall issue the summons under Rule 4 of the Indiana Rules of
25 Trial Procedure.

26 SECTION 7. IC 31-34-22-2 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Except as
28 provided in subsection (b), a report prepared by the state:

29 (1) for the juvenile court's review of the court's dispositional
30 decree; or

31 (2) prepared for use at a periodic case review under IC 31-34-21-2
32 or hearing under IC 31-34-21-7;

33 shall be made available to the child and the child's parent, guardian,
34 guardian ad litem, **court appointed special advocate**, or custodian
35 within a reasonable time after the report's presentation to the court or
36 before the hearing.

37 (b) If the court determines on the record that the report contains
38 information that should not be released to the child or the child's
39 parent, guardian, or custodian, the court shall provide a copy of the
40 report to the following:

41 (1) Each attorney or guardian ad litem representing the child.

42 (2) Each attorney representing the child's parent, guardian, or

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1 custodian.

2 (3) Each court appointed special advocate.

3 (c) The court may also provide a factual summary of the report to
4 the child or the child's parent, guardian, or custodian.

5 (d) In addition to the requirements of subsection (a), any report
6 prepared by the state for the juvenile court's review shall also be made
7 available to any court appointed special advocate within the same time
8 period and in the same manner as required in the case of a parent under
9 subsection (a). However, if under subsection (a) the court determines
10 on the record that the report contains information that should not be
11 released to the parent, the court shall still provide a copy of the report
12 to any court appointed special advocate.

13 SECTION 8. IC 31-34-23-1 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. While the juvenile
15 court retains jurisdiction under IC 31-30-2, the juvenile court may
16 modify any dispositional decree:

17 (1) upon the juvenile court's own motion;

18 (2) upon the motion of:

19 (A) the child;

20 (B) the child's:

21 (i) parent;

22 (ii) guardian;

23 (iii) custodian;

24 (iv) **court appointed special advocate**; or

25 (v) guardian ad litem;

26 (C) the probation officer;

27 (D) the caseworker;

28 (E) the prosecuting attorney; or

29 (F) the attorney for the county office of family and children; or

30 (3) upon the motion of any person providing services to the child
31 or to the child's parent, guardian, or custodian under a decree of
32 the court.

33 SECTION 9. IC 31-34-23-4 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. If a hearing is
35 required, IC 31-34-18 governs the preparation and use of a
36 modification report. The report shall be prepared if the state or any
37 person other than the child or the child's parent, guardian, guardian ad
38 litem, **court appointed special advocate**, or custodian is requesting
39 the modification.

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SENATE MOTION

Madam President: I move that Senator Lanane be added as coauthor of Senate Bill 340.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 340, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 2. IC 31-17-2-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. Upon:

- (1) the court's own motion;
- (2) the motion of a party;
- (3) the motion of the child; ~~or~~
- (4) the motion of the child's guardian ad litem; **or**
- (5) the motion of the court appointed special advocate;**

the court may order the custodian or the joint custodians to obtain counseling for the child under such terms and conditions as the court considers appropriate."

Page 3, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 4. IC 31-34-2.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. Whenever a child is taken into custody without a court order under this chapter, the attorney for the county office of family and children shall, without unnecessary delay, request the juvenile court to:

- (1) authorize the filing of a petition alleging that the child is a child in need of services;
- (2) hold an initial hearing under IC 31-34-10 not later than the next business day after the child is taken into custody; and
- (3) appoint a guardian ad litem **or a court appointed special advocate** for the child."

Page 3, line 34, delete "bests" and insert "**best**".

Page 3, after line 34, begin a new paragraph and insert:

"SECTION 6. IC 31-34-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The juvenile court shall hold an initial hearing on each petition.

(b) The juvenile court shall set a time for the initial hearing. A summons shall be issued for the following:

- (1) The child.
- (2) The child's parent, guardian, custodian, ~~or~~ guardian ad litem, **or court appointed special advocate.**
- (3) Any other person necessary for the proceedings.

(c) A copy of the petition must accompany each summons. The clerk shall issue the summons under Rule 4 of the Indiana Rules of Trial Procedure.

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SECTION 7. IC 31-34-22-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Except as provided in subsection (b), a report prepared by the state:

- (1) for the juvenile court's review of the court's dispositional decree; or
- (2) prepared for use at a periodic case review under IC 31-34-21-2 or hearing under IC 31-34-21-7;

shall be made available to the child and the child's parent, guardian, guardian ad litem, **court appointed special advocate**, or custodian within a reasonable time after the report's presentation to the court or before the hearing.

(b) If the court determines on the record that the report contains information that should not be released to the child or the child's parent, guardian, or custodian, the court shall provide a copy of the report to the following:

- (1) Each attorney or guardian ad litem representing the child.
- (2) Each attorney representing the child's parent, guardian, or custodian.
- (3) Each court appointed special advocate.

(c) The court may also provide a factual summary of the report to the child or the child's parent, guardian, or custodian.

(d) In addition to the requirements of subsection (a), any report prepared by the state for the juvenile court's review shall also be made available to any court appointed special advocate within the same time period and in the same manner as required in the case of a parent under subsection (a). However, if under subsection (a) the court determines on the record that the report contains information that should not be released to the parent, the court shall still provide a copy of the report to any court appointed special advocate.

SECTION 8. IC 31-34-23-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. While the juvenile court retains jurisdiction under IC 31-30-2, the juvenile court may modify any dispositional decree:

- (1) upon the juvenile court's own motion;
- (2) upon the motion of:
 - (A) the child;
 - (B) the child's:
 - (i) parent;
 - (ii) guardian;
 - (iii) custodian;
 - (iv) **court appointed special advocate**; or
 - (v) guardian ad litem;

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- (C) the probation officer;
 - (D) the caseworker;
 - (E) the prosecuting attorney; or
 - (F) the attorney for the county office of family and children; or
- (3) upon the motion of any person providing services to the child or to the child's parent, guardian, or custodian under a decree of the court.

SECTION 9. IC 31-34-23-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. If a hearing is required, IC 31-34-18 governs the preparation and use of a modification report. The report shall be prepared if the state or any person other than the child or the child's parent, guardian, guardian ad litem, **court appointed special advocate**, or custodian is requesting the modification."

Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 340 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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